Supreme Court, U.S.
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NO. _____

In The

SUPREME COURT OF THE UNITED STATES

MILTON DOBBIN EVANS,

Petitioner,

vs.

D.L. HOBBS, Warden, F.C.C.,

Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Milton Dobbin Evans
P.O. Box 879
Coleman, FL 33521-0879

Petitioner

39pp

QUESTIONS PRESENTED

1. Whether a defendant's "actual innocence" claim as to his (pre-Bailey)§924(c)(1) conviction is procedurally barred from habeas corpus review under Title 28 U.S.C. § 2241, when a petition under 28 U.S.C. § 2255 is simply not available?

2.. Whether barring defendant's "actual innocence" claim as to his §924(c) (1) conviction from judicial review raises serious constitutional questions and offends the U.S. Constitution by allowing a person to stand convicted of an offense which he can prove he is actually innocent as a result of a new rule of constitutional law and a correction of a statutory interpretation to be applied retroactively by the U.S. Supreme Court?

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PETITION FOR WRIT OF CERTIORARI

Milton Dobbin Evans (Mr. Evans), respectfully prays for a writ of certiorari to review and reverse the judgment of the United States Court of Appeals for the Eleventh Circuit entered in the above referenced matter on November 18, 1999.

OPINIONS BELOW

The unpublished opinion of Eleventh Circuit Court of Appeals reproduced in the Appendix hereto 1(a)). Also appended is the Order of the District Court dated March 19, 1999, in *Evans v. Hobbs*, Case No. 99-61-CIV-OC-10-A (App. 3(a)).

JURISDICTION

Mr. Evans' petition seeks review of the judgment of the Court of Appeals entered on November 18, 1999 (App.1(a)). This Court's jurisdiction is invoked pursuant to Title 28 U.S.C. §1254(1). This petition presents this Court with a serious constitutional question as well as a conflict

among the Circuit Courts of Appeal that materially effects a determination made in the present case. The Constitutional question and conflict arises over whether a defendant can raise an "actual innocence" claim via a habeas corpus petition under Title 28 U.S.C. § 2241 in light of a new rule of constitutional law to be applied retroactively, when a petition under Title 28 U.S.C. § 2255 is simply not available.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of Title 28 U.S.C.§§ 2241 and 2255, Title 18 U.S.C. § 924(c)(1), the Fifth and Eighth Amendments to the U.S. Constitution are set forth in the appendix. (App. 6, 7, 8,9, and 10).

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

In 1989, Milton Dobbin Evans was indicted by a federal grand jury for the Middle District of Georgia for violation of Title 18 U.S.C. §924(c)(1) and Title 21 U.S.C. § 846, and 841(a)(1). He entered into a written plea agreement

wherein he agreed to plead guilty to "use" of a firearm during and in relation to a drug trafficking crime as well as the drug offense. He was later sentenced to a term of 175 months imprisonment under the drug count and 60 months imprisonment under the §924(c)(l) count, to run consecutive. (App.5(a)).

In March, 1996, Mr. Evans filed his first collateral attack against his conviction and sentence imposed under the §924(c)(1) count in light of this Court's decision in *Bailey v. United States*, 517 U.S. 137 (1995). Mr. Evans claimed he did not "use" the firearms as defined in *Bailey*. The district court summarily denied the § 2255 petition without merit citing Mr. Evans admission at the plea hearing that he "used" the firearms as charged.

In 1997, the Eleventh Circuit Court of Appeals affirmed the district court's order of denial by an unpublished opinion.

In July of 1998, Mr. Evans filed an application for leave to file a second motion to vacate his *Bailey* conviction under 28 U.S.C. § 2255 with the Eleventh Circuit Court of Appeals in light of *Bousley v. United States*, 523 U.S. 614 (1998). The Eleventh Circuit denied the application. (App. 4(a) & (b)).

A few months later, Mr. Evans filed a habeas corpus petition under Title 28 U.S.C. § 2241 in the Middle District of Florida (the district of his confinement) seeking to vacate his §924(c)(l) conviction based on an "actual innocence" claim as defined in *Bousley*. The district court dismissed the petition without prejudice citing that a §2241 petition was not the proper avenue to raise an actual innocence claim. (App. 3(a)).

On November 18, 1999, the Eleventh Circuit Court of Appeals affirmed the district court's judgment. (App. 1(a)). On January 14, 2000, Mr. Evans' Petition for Rehearing and Suggestion En Banc was denied. (App. 2).

Mr. Evans is presently imprisoned at FCC-Coleman (LOW), a federal correctional institution located in Coleman, Florida, serving his sentence.

B. FACTS

On January 21, 1989, Milton Dobbin Evans was helping a friend, Renee Hester, move from her former house to an apartment. She loaded her belongings and two (2) firearms, a 9mm Browning pistol and a 12 gauge Mossberg shotgun into her vehicle. They both entered the vehicle and drove to her new residence. While en route, a Deputy Sheriff stopped the vehicle and informed Ms. Hester that she had committed a traffic violation. Upon learning of Mr. Evans'

prior felony conviction, the deputy searched the vehicle whereupon he located the two above described firearms. The deputy then arrested and charged Mr. Evans with a state offense of "felon-in-possession" of a firearm. The state charge was later dismissed after the state prosecutor received clear and convincing proof that Ms. Hester owned the guns and was moving to a new home.

In April 1989, the Government concluded its investigation of Mr. Evans' drug trafficking activities. During the course of its investigation, federal agents had searched a fish camp trailer frequented by Mr. Evans and located therein a .45 caliber pistol underneath the carpet in a closet. As a result of the seizure of the above firearm as well as the firearms seized by the deputy as described above, a federal grand jury for the Middle District of Georgia indicted Mr. Evans for violation of Title 18 U. S.C. §924(c)(1)["use" and "carry" of a firearm during and in relation to a drug trafficking crime]. The basis of the §924 (c)(1) charge was Mr. Evans' constructive possession of the three (3) firearms described above. Mr. Evans was also charged in violation of Title 21 U.S.C. §§ 846 and 841(a)(1),

In 1990, Mr. Evans, unable to read or write and raised *dirt road poor*[1], entered into a written plea agreement with the Government wherein he agreed to plead guilty to "use" of a firearm during and in relation to the drug trafficking crime as well as the drug charge. He was told by his attorney that his constructive possession of the firearms established the requisite liability under §924 (c)(1). The district court accepted Mr. Evans' guilty plea and later sentenced him to a term of 175 months imprisonment on the drug count and a 60 month consecutive sentence under the §924(c)(1) count. (App. 5(a)).

In 1995, this Court decided *Bailey v. United States*, 516 U.S. 137 (1995), which clarified the meaning of the term "use" in 18 U.S.C. § 924(c)(1).

In 1996, before the Anti-terrorism and Effective Death Penalty Act (AEDPA) became law, Mr. Evans, illiterate, unsophisticated, and with the assistance of an inmate, took his first post-conviction shot under 28 U.S.C.§ 2255 seeking to vacate his conviction and sentence under the §924(c)(1) count

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[1] The term, *dirt road poor* is commonly used to define those individuals who were raised in an unsophisticated environment.

in light of the decision in *Bailey*. Relying on the written judgment and commitment order in his criminal case (given to him by the prison authorities), which showed that he was convicted of the §924(c)(1) charge under the "use" prong of the statute, (App. 5(a)), he claimed that he did not "use" the firearms as defined in *Bailey*. The district court summarily denied the §2255 petition without merit citing Mr. Evans' admission at the plea hearing that he "used" the firearms as charged. The Eleventh Circuit affirmed the order of denial.

In May 1998, this Court decided *Bousley v. United States*, 523 U.S. 614 (1998) which created a new rule of constitutional law to be applied retroactively - a showing of actual innocence will relieve a defendant of his procedural default in failing to contest his §924(c)(1) guilty plea in his prior direct appeal.

In September 1998, Mr. Evans filed an application for leave to file a second motion to vacate his Bailey conviction under 28 U.S.C. § 2255 with the Eleventh Circuit Court of Appeals in light of the decision in *Bousley*. The circuit court denied the application. (App.4(a)).

A few months later, Mr. Evans filed a habeas corpus petition under 28 U.S.C. §2241 in the Middle District of Florida - the district of his confinement. He attempted to raise

his actual innocence claim. The district court dismissed the petition without prejudice citing that a §2241 petition was not the proper avenue to raise an actual innocence claim. (App.3(a)). The Eleventh Circuit affirmed the district court's order of dismissal.[2] (App. 1 (a)). The court also denied Mr. Evans' Petition for Rehearing and Suggestion *En Banc* on January 14, 2000.

The instant petition followed.

REASONS FOR GRANTING THE PETITION

The Court should grant the writ of certiorari because the questions raised by this case involve serious constitutional questions as well as a conflict among the circuit court of appeals and this Court.

The Eleventh Circuit Court of Appeals decided against Milton Dobbin Evans on the issue of whether a habeas corpus petition under Title 28 U.S.C. §2241 is a proper avenue to raise an "actual innocence" claim as to a §924(c)(1) conviction in light of this Court's decisions in *Bousley* and *Bailey*, when a §2255 petition is simply not available to test the legality of

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In the appellate court below, the government elected not to defend the District Court's judgment or oppose Mr. Evans' claim as presented herein. The government did not file an answer brief.

his conviction based on a new rule of constitutional law and a correction of a statutory interpretation.

The Eleventh Circuit reasoned that since Mr. Evans took his first post-conviction shot, (in 1996), after the *Bailey* decision, (although before *Bousley*), he cannot now raise an actual innocence claim simply because this Court decided a new rule of constitutional law in *Bousley*. In other words, the Eleventh Circuit held that a claim of "actual innocence" will not permit a habeas corpus petitioner to have a second bite at the post-conviction apple. This decision by the Eleventh Circuit is plainly contrary to this Court's holding in *Bousley*, *Murray v. Carrier*, 447 U.S. 478, 106 S.Ct. 2639 (1986), *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851 (1995), and *Davis v. United States*, 417 U.S. 333, 94 S.Ct. 2298 (1974) as well as the recent decisions of the First, Second, and Third Circuit Court of Appeals.

It is, of course, true that "federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution," and not to review questions of guilt or innocence. See *Herrera v. Collins*, 506 U.S. 390, 404, 113 S.Ct. 853, 122L.Ed.2d 203 (1993). However, in *Herrera* this Court explained:

> [W]e have held that a petitioner otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence. This rule, or fundamental miscarriage of justice exception, is grounded in the "equitable discretion" of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons. But this body of our habeas jurisprudence makes clear that a claim of "actual innocence" is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.

Id. at 404, 113 S.Ct. 853.

Following this Court's decision in *Bousley*, other circuit courts have held that "a claim of actual innocence - defined as factual innocence, not mere legal insufficiency - will have a mechanism for review." *United States v. Barrett*, 178 F.3d 34, 57 (1st Cir.1999); see also *United States v. Lloyd*, 188 F.3d 184 (3rd Cir.1999) ("Motion to vacate conviction

of using and carrying firearm ... when filed not later than one year after United States Supreme Court *Bousley* decision recognizing right to raise *Bailey* claim on collateral review" was not time barred.); *Triestman v. United States*, 124 F.3d 361, 377 (2nd Cir. 1997)(§2241 will be available to free a §2255 movant from AEDPA's restriction on second or successive motion whenever failure to permit a remedy would raise serious constitutional questions.)

The Sixth Circuit Court of Appeals in *Charles v. Chandler*, 180 F.3d 753, 757 (6th Cir. 1999) refrained from deciding the issue of whether a second bite at the post-conviction apple was permissible under an "actual innocence" claim. The Sixth Circuit stated "We agreed with the First Circuit, except to the extent that we, as noted earlier, withhold judgment on the question of whether a claim of 'actual innocence' will permit a habeas corpus petitioner to have a 'second bite at the apple'." Id. (compares *Barrett* supra.)

In the case *sub judice*, Mr. Evans was told by his attorney that his "constructive" possession of the firearms at the fish camp trailer and in Ms. Hester's vehicle established his guilt under 18 U.S.C. §924(c)(1). Of course the passing of time now tells us that Mr. Evans' lawyer did not correctly interpret the §924 (c)(l) statute as well as properly advise his

client as to the requisite liability under §924(c)(l). Based on this erroneous advice, Mr. Evans, like *Bousley*, pleaded guilty to the §924(c)(l) charge - a plea which was not intelligently made. Under these circumstances, this Court has held that "were this contention proven, petitioner's plea would be.. constitutionally invalid." *Bousley*, 523 U.S. at____, 140 L.Ed2d at 827.

The problem here is, Mr. Evans just like *Bousley*, has defaulted this constitutional claim since he failed to raise it on direct appeal. The problem extends one step further - Mr. Evans did not raise the claim in his first post-conviction attack. Mr. Evans claims here that he did not know to raise such a claim since *Bousley* had not been decided.

Nonetheless, this Court settled the controversy of prisoners seeking judicial review of their claims of "actual innocence" as a result of a correction of a statutory interpretation. Id

In *Bousley*, this Court defined "actual innocence" as "factual innocence, not mere legal insufficiency." 523 U.S. at 140 L.Ed2d at 840. This Court held that a habeas corpus petitioner must be afforded an opportunity to make a showing of factual innocence by providing additional evidence and allowing the expansion of the record. Id Of course, the

Government is afforded the same opportunity. This procedure makes sense - because the burden, a heavy one at that, is on the prisoner.[3]

In the case below, the Eleventh Circuit reasoned that since Mr. Evans failed to raise his "actual innocence" claim as to the §924(c)(1) conviction in his first post-conviction attack in 1996, he was procedurally barred from raising the claim now, via a §2241 petition, notwithstanding that *Bousley* had been decided two years later. Petitioner respectfully submits that the Eleventh Circuit simply misinterprets *Bousley*. It is obvious that had the district court in reviewing Mr. Evans' first §2255 petition (filed in 1996) had the benefit of *Bousley*, the district court would have allowed Mr. Evans' to develop the record and demonstrate how he did not "use" the firearms as alleged. But *Bousley* was not decided at the time nor did the

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[3] Following the decision in *Bousley*, the circuit courts explicitly held that inmates are entitled to an evidentiary hearing at which the inmate and Government could present additional evidence and develop the record. See *United States v. Jones*, 172 F.3d 381,384 (5th Cir.1999); *United States v. Leopard*, 170 F.3d 1013 (10th Cir.1999); and *United States v. Garth*, 188 F.3d. 99 (3rd Cir. 1999).

district court reviewing the §2255 petition have the benefit of the "new rule of constitutional law".

Other federal circuit courts have ruled in favor of Mr. Evans' position here that is an "actual innocence" claim will permit a second bite at the post-conviction apple. See *Barrett*, *Lloyd*, and *Triestman*, supra.

It is reasonable to "conclude that serious constitutional questions arise if a person who can prove his actual innocence . . . had no access to judicial review." *Triestman v. United States*, 124 F.3d 361, 363 (2nd Cir. 1997).

The Eleventh Circuit not only refused to adopt the holding by the Second Circuit but "agreed with the Seventh Circuit's criticism of the *Triestman* rule as 'too indefinite' to meet the 'needs of practical judicial enforcement.'" *Wofford v. Scott*, 177 F.3d 1236, 1243 (11th Cir.1999) (quoting *In re Davenport*, 147 F.3d 605, 611 (7th Cir.1998).

Mr. Evans' actual innocence claim, like *Bousley*, "presents exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent." *Davis v. United States*, 417 U.S. 333, 346, 94 S.Ct. 2198 (1974).

It is also apparent that the Eleventh Circuit's decision below conflicts with not only the decisions of its sister circuits,

but also the decisions of this Court. See *Bousley*, *Herrera*, *Davis* and *Murray*.

CONCLUSION

Based on the foregoing argument and law, Mr. Evans requests this Court to grant the instant petition for writ of certiorari and reverse the decisions below.[4]

Respectfully submitted,

Milton Dobbin Evans
FCC-Coleman (LOW)
P.O. Box 879
Coleman, FL 33521-0879

PETITIONER

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[4] While Mr. Evans paces the floor in his draconian environment, pensive, he constantly repeats two rhetorical questions - "Why would the government want to keep an innocent man in prison, Why?; and the other - "How could I be so dumb to plead guilty to something I wasn't guilty of?"Maybe the answer lies in this Court's decision today. Mr. Evans extends his gratitude to Chris Mylett, Paralegal Specialist, who authored the instant petition and Jennifer Dykes, Paralegal, who prepared the instant petition for filing.

APPENDIX

FOR THE ELEVENTH CIRCUIT

No. 99-10282
Non Argument Calendar

D.C. Docket No. 99-00061-CIV-OC-10-B

MILTON DOBBIN EVANS,

Petitioner-Appellant,

versus

D.L. HOBBS, Warden, F.C.C.

Respondent-Appellee.

Appeal from the United States Court
for the Middle District of Florida

(November 18, 1999)

Before, BLACK, CARNES and MARCUS, Circuit Judges

PER CURIAM:

Milton Dobbin Evans, a federal prisoner, appeals pro

se the district court's denial of habeas corpus petition, 28 U.S.C. § 2241, alleging a claim pursuant to Bailey v. United States, 516 U.S. 137, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995).

Evans raises two issues on appeal. First, he argues that the district court abused its discretion by failing to exercise its jurisdiction pursuant to 28 U.S.C. § 2241. Second, he argues that this Court has jurisdiction pursuant to 18 U.S.C. § 3742(a)(1) to review his sentence and to make a ruling on the merits of his complaint. He argues extensively to this Court the merits of his Bailey claim. In his motion to appoint counsel, Evans restates the issues and defines it as whether the district court erred in concluding that his § 2241 petition was not a proper vehicle to assert a Bailey claim. He contends that the is seeking access to the courts to assert his claim that he is innocent under the Supreme Court's holding in Bailey.

This Court reviews the grant or denial of habeas corpus relief de novo. Wright v. Hopper, 169 F.3d 695, 701 (11th Cir.), cert. denied, ___ S.Ct. ___ (No. 99-5354) (Oct. 12, 1999).

We have reviewed the petitioner's brief and considered the record and conclude there is no reversible error. This Circuit's precedent did not foreclose Evans' Bailey claim at the time he brought his first § 2255 petition, which is a

prerequisite to use of a § 2241 petition to avoid the bar on successive § 2255 petitions. See Wofford v. Scott, 177 F.3d 1236, 1244 (11th Cir. 1999). Moreover, this is not the proper circumstance for 18 U.S.C. § 3742(a)(1) relief.

AFFIRMED.*

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* Hobbs' motion for appointment of counsel is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-10282-DD

MILTON DOBBINS EVANS,

Petitioner-Appellant,

versus

D.L. HOBBS, Warden, F.C.C.

Respondent-Appellee

- - - - - - - - - - - - - - -

On Appeal from the United States District Court for the Northern District of Georgia

- - - - - - - - - - - - - - -

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19__, ___ F.2d ___).

Before: BLACK, CARNES and MARCUS, Circuit Judges

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no number of this panel, nor other Judge in regular active service on the

Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/S/
United States Circuit Court

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

MILTON DOBBIN EVANS,

Petitioner,

vs.

Case No. 99-61-Civ-Oc-10B

D.L. Hobbs, etc.

Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Petitioner filed a "Motion to Vacate Sentence for Violation of Title 18 U.S.C. § 924(c)(1)" pursuant to 28 U.S.C. § 2241 on March 5, 1999. Although Petitioner asserts that the action is properly brought pursuant to § 2241, upon review of the petition, it is clear that the appropriate avenue for challenging the federal conviction and/or sentence is by filing a motion pursuant to 28 U.S.C. § 2255. Petitioner's ground clearly presents such a challenge.

Petitioner states he previously filed a 28 U.S.C § 2255 motion, which was denied. Further, Petitioner filed a motion in the Eleventh Circuit, seeking an order authorizing the district court to consider his successive motion to vacate, set

aside, or correct sentence. However, the Eleventh Circuit, on September 8, 1998, denied is motion for authorization, stating Petitioner "failed to make a prima facie showing that his motion contains a claim predicated on newly discovered evidence or a new rule of constitutional law, as described in § 2255 . . . " See Petitioner's Exhibit 1.

Upon review of the law in this Circuit, it is clear that pursuant to 28 U.S.C. § 2255 and 2244(b)(1), as amended by the Antiterrorism and Effective Death Penalty Act of 1996, Petitioner is precluded from presenting a second or successive petition based on a Bailey claim. In re Blackshire, 98 F.3d 1293, 1294 (11th Cir. 1996). In Blackshire, the court found: "Bailey did not express a new rule of constitutional law; rather, it merely interpreted a substantive criminal statute using rules of statutory construction." Id.

It is thus clear that a § 2241 petition is not the proper avenue to challenge the conviction and sentence based on the Bailey claim. See Blackshire, 98 F.3d 1293-94; United States v. Mixon, 115 F.3d 900, 901 (11th Cir. 1997). Petitioner has not presented adequate justification for his failure to raise his current claim in the first § 2255 motion.

Accordingly, this action will be dismissed without prejudice.

Therefore, it is now

ORDERED AND ADJUDGED:

1. This case is hereby **DISMISSED WITHOUT PREJUDICE**.

2. The Clerk of the Court shall enter judgment accordingly.

DONE AND ORDERED at Jacksonville, Florida this 19th day of March, 1999.

/s/ Wm Ferrell Hodges UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-1283

IN RE: MILTON DOBBIN EVANS

Petitioner,

Application for Leave to File a Second or
Successive Motion to Vacate, Set Aside, or
Correct Sentence, 28 U.S.C. §§ 2255, 2244(b)(3)(A)

Before, DUBINA, BARKET and MARCUS, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255 and 2244(b)(3)(A), as amended by §§ 105 and 106 of the Antiterrorism and Effective Death Penalty Act of 1996, Milton Dobbin Evans has moved for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence. Such authorization may be granted only if this Court certifies that the second or successive motion contains

a claim involving:

> (1) newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255. Because Evans has failed to make a prima facie showing that his motion contains a claim predicated on newly discovered evidence or a new rule of constitutional law, as described in § 2255, his motion for an order authorizing the district court to consider his second or successive motion to vacate, set aside, or correct sentence is hereby DENIED.

UNITED STATES DISTRICT COURT
MIDDLE District of GEORGIA

UNITED STATES OF AMERICA JUDGMENT
INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT

v.

MILTON DOBBIN EVANS
CASE NO. CR-89-42-MAC(WDO)

(Name of Defendant)

Emory Walters (Retained) Paul Bowden (retained)
P.O. Box 247 P.O. Box 247
Ocilla, GA 31774 Ocilla, GA 31774

_____
Defendant's Attorney

THE DEFENDANT:
[x] pleaded guilty to count(s) One and Two
[ ] was found guilty on count(s) _____ plea of not guilty

Accordingly, the defendant is adjudged guilty of such count(s) which involve the following offenses:
21 U.S.C. § 846 i/c/w Conspiracy to possess with intent to21 U.S.C. § 841(a)(1) distribute cocaine, a Schedule II controlled substance 18 U.S.C. § 924(c)(1)Use of firearm in connection with drug trafficking crime

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s)

_____ ____ and is discharged as to such counts.

[ ] Count(s) _____ (is)(are) dismissed on the motion of the United States.

[ ] The mandatory special assessment is included in the portion of this Judgment that imposes a fine

[x] It is ordered that the defendant shall pay to the United States a special assessment of $100.00 which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
259-86-1307

April 30, 1990

/ s /

Wilbur D. Owens, Jr.

Chief

U.S. District Judge
Defendant's residence address:
1362 Lawrence Dr.
Macon, Georgia 31201

May 13, 1990

Defendant: Milton Dobbin Evans

Case Number: CR-89-42-MAC(WDO)

IMPRISONMENT

The defendant is hereby committed to the custody of

the United States Bureau of Prisons to be imprisoned for the term of 175 months on Count 1
60 months on Count 2 all to run consecutively for a total of 235 MONTHS

[ ] The Court makes the following recommendations to the Bureau of Prisons:

[x] The defendant is remanded to the custody of the United States Marshall

[ ] The defendant shall surrender to the United States Marshall for this district
a.m.

[ ] at __ p.m. on _____

[ ] as notified by the Marshall

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

[ ] before 2:00 p.m. on _____

[ ] as Notified by the United States Marshall

[ ] as notified by the Probation Officer

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on _____ to

_____

_____, with a certified copy of this Judgment.

_____

United States Marshall

By:_____

Deputy

Marshall

Defendant: MILTON DOBBIN EVANS
Case Number: CR-89-42-MAC(WDO)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 8 years

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following pate). If this judgment imposes a restitution obligation, it shall be a condition of supervised release the defendant pay any such restitution that remains unpaid at the commencement of the term of a supervised release.

[ ] The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

1. Defendant shall not posses firearms or other dangerous weapons.
2. Defendant shall not possess any illegal controlled substance. Possession of illegal controlled substance will result in mandatory revocation.

Defendant: MILTON DOBBIN EVANS
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STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

1. The defendant shall not commit another Federal, state or local crime.
2. the defendant shall not leave the judicial district without the permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependants and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reason;
7. the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;

10. the defendant shall not associate with any person engaged in criminal activity, and shall not associated with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the probation officer;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $100.00, consisting of a fine of $-0- and a special assessment of $100.00

[ ] These amounts are the totals of the fines and assessments imposed on individual counts as follows:

$50.00 mandatory assessment on Count 1
$50.00 mandatory assessment on Count 2

This sum shall be [x] paid immediately.
[ ] as follows:

[ ] The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

[ ] The interest requirement is waived.
[ ] The interest requirement is modified as follows:

It is the Court's judgment that the defendant is unable and not likely to become able to pay off or part of a fine even with the use of a reasonable installment schedule; therefore, the Court waives the fine as well as any alternative sanctions in this case. The Court is also waiving the additional find requiring that defendant pay the cost of imprisonment and/or supervision fee.